```
1
   Robert S. Besser (SBN 46541)
   Christopher Chapin (SBN 112608)
2
   LAW OFFICES OF ROBERT S. BESSER
   1221 Second Street, Suite 300
 3
   Santa Monica, California 90401
   TEL: (310) 394-6611
4
           (310) 394-6613
   Fax:
   rsbesser@aol.com
5
   christopherchapin@aol.com
6
   Attorneys for Defendant
   CBS STUDIOS INC.
7
8
                      UNITED STATES DISTRICT COURT
9
                      CENTRAL DISTRICT OF CALIFORNIA
10
11
   DELRAY RICHARDSON p/k/a DELRAY
                                       Case No. CV12-7925 ABC (SHx)
   d/b/a DEL FUNK BOY MUSIC, an
                                        Honorable Audrey B. Collins
12
   individual, and STERLING A.
   SYNDER d/b/a/ ZION RECORDS,
13
   an individual,
                                        OBJECTIONS TO AND MOTION TO
                                        STRIKE PORTIONS OF THE
14
                   Plaintiffs,
                                        DECLARATION OF DELRAY
                                        RICHARDSON OPPOSING MOTION
   VS.
15
                                        FOR SUMMARY JUDGMENT
   CBS STUDIOS INC., d/b/a CBS
16
   TELEVISION DISTRIBUTION, a division
   of CBS CORPORATION, a Delaware
17
   corporation,
18
                   Defendants.
                                                  September 30, 2013
                                           Date:
                                           Time:
                                                  10:00 a.m.
19
                                           Ctrm:
                                                  680
                                                  Roybal Building
20
21
         Defendant CBS STUDIOS INC. ("CBS") makes the following
22
   objections and moves to strike the following portions of the
23
   Declaration of Delray Richardson in Support of Opposition to
24
   Defendant's Motion for Summary Judgment:
25
26
                                    -1-
27
             OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF
```

THE DECLARATION OF DELRAY RICHARDSON

#### DECLARATION OF DELRAY RICHARDSON

#### Paragraph "B"

Plaintiff Delray Richardson ("Richardson") states only that he has "personal knowledge of the facts which bear on this Motion." He does not say that he has personal knowledge of the facts stated in his declaration.

FRCP 56 (c)(4) states: "An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated."

FRE 602 requires that a testifying witness have personal knowledge of the matter testified to.

Statements of mere belief in an affidavit must be disregarded. Rule 56(e) also requires that copies of all papers or parts thereof referred to in an affidavit be attached thereto or served therewith. To enforce this rule, the court ordinarily does not strike affidavits, but simply disregards those portions that are not shown to be based upon personal knowledge or otherwise do not comply with Rule 56(e). Stevens v. Water Dist. One, 561 F. Supp. 2d 1224, 1231 (D. Kan. 2008).

<sup>&</sup>lt;sup>1</sup> Unless otherwise noted, Defendant seeks to strike the entirety of each paragraph of the Richardson Declaration that it has identified herein and any "exhibit" that is referenced therein.

<sup>-2-</sup>

Richardson's testimony is for the most part not admissible and for an even greater part, not even relevant. Each specific objection is set forth below.

## Paragraph C 2 and Exhibit 1.

Irrelevant; FRE 403. Except that it one more time shows that Richardson and Jeeve worked as equal co-writers.

## Paragraph C 3 and Exhibit 2.

Irrelevant; FRE 403: The fact that Richardson previously sued Jean-Yves Ducornet ("Jeeve") in small claims court has no possible relevance to claims for copyright infringement.

Inadmissible Compromise Offers and Negotiations; FRE 408(a)(1) and (2):

Richardson may not use evidence of settlement proceedings either to prove or disprove the validity of a disputed claim.

Not Authenticated; FRE 901

If documents are to be authenticated through personal knowledge to support a summary judgment motion, the proponent of the documents must attach them "to an affidavit that meets the requirements of FRCP 56(e) and the affiant must be a person through whom the exhibits could be admitted into evidence."

Canada v. Blain's Helicopters, Inc., 831 F.2d 920, 925 (9th Cir. 1987); see also Orr v. Bank of America, NT & SA, 285 F.3d 764, 775, 774, n. 8 (9th Cir. 2002) ("A document can be authenticated under rule 901(b)(1) by a witness who wrote it, signed it, used it, or saw others do so.") (quoting 31 Wright & Gold, Federal

Practice & Procedure: Evidence § 7106, 43 (2000)).

A proper foundation also may be established through means other than personal knowledge, including any of the means included in FRE 901 or permitted as self-authenticating by FRE 902 if the proper certification is affixed to the document. See FRE 902.

Richardson nowhere explains what his exhibits actually are, let alone authenticate them. He simply inserts a number referring to one of his attached exhibits. Richardson fails to state that the exhibits are "true and correct copies" of what they purport to be - nor does he explain why several of the exhibits are obviously incomplete.

#### Paragraph C. 4

Irrelevant; FRE 403

Inadmissible hearsay; FRE 801(c)

## Paragraphs C. 5 and 6; Exhibit 3 and 4

The entirety of Paragraphs 5 and 6 are inadmissible hearsay, FRE 801(c). Whatever Jeeve said out of court, since it is offered to prove the truth of what Jeeve believed, is inadmissible "opinion within hearsay." It is therefore prohibited by FRE 701.

In addition, the attached copies of alleged emails from Jeeve to Richardson are not authenticated (Exhibits 3 and 4). FRE 901.

25

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

26

27

1	Paragraph C. 7
2	Inadmissible opinion testimony; FRE 701
3	Contains impermissible legal assertions and conclusions
4	Paragraphs C. 8 and 9
5	Inadmissible opinion testimony; FRE 701
6	Irrelevant; FRE 403
7	Contains legal conclusions
8	Paragraph 10
9	Irrelevant; FRE 403
10	Inadmissible hearsay; FRE 801(c)
11	Paragraphs 11 through 14 and Exhibits 6 through 11
12	The entireties of all paragraphs and exhibits referred to
13	therein consist of inadmissible hearsay; FRE 403
14	Exhibits 6 through 11 are also not authenticated; FRE 901
15	Paragraph 15
16	First two sentences are inadmissible, immaterial and
17	irrelevant hearsay; FRE 801(c) and 403. Third sentence is
18	conclusory, unsupported and inadmissible opinion; FRE 701.
19	Paragraphs 16 through 19 and Exhibits 12 through 15
20	The entireties of all paragraphs and exhibits referred to
21	therein consist of inadmissible hearsay; FRE 403
22	Exhibits 12 through 15 are also not authenticated; FRE 901
23	Paragraph 20
24	Inadmissible hearsay; FRE 801(c)
25	
26	-5-
27	

# Paragraph 21

Exhibit 16 is incomplete (FRE 106), obviously missing many pages, and there is no explanation contained anywhere in Richardson's Declaration for the exclusion of pages from a document he claims he got from opposing counsel.

### Paragraphs 22 through 25 and Exhibit 17

Each paragraph consists almost entirely of inadmissible hearsay, FRE 801(c).

Specifically, Paragraph 22 refers to a "letter dated August 16, 2012 the Defendant counsel stated in a correspondence with the plaintiffs that 'Love You So': 'This instrumental was not used in episodes 105 and 109 as Mr. Richardson is claiming.'"

No copy of any such letter is attached.

Paragraph 24 refers to a cue sheet from Episode 1410 allegedly provided by Defendant "in discovery." There is no cue sheet for Episode 1401 attached.

Paragraph 25 refers to a cue sheet from Episode 807 and 1307. Neither is attached. Exhibit 17 is an unauthenticated copy of what purports to be a "Mechanical License Agreement" between Plaintiffs Richardson and Snyder, which is irrelevant to the issues. FRE 403.

#### Paragraphs 26 through 28

Again, the statements made in these paragraphs are not only confusing, but represent nothing that could create an issue of material fact such as to defeat a motion for summary judgment.

-6-

# Paragraphs 29 through 36

Once again, none of the documents referred to are attached to the declaration. Mr. Richardson claims to have watched episodes of ANTM on broadcast television (the Style Network) and heard certain songs played at certain times. At the very least, such testimony about "viewing time" does not take into consideration the fact that commercials are broadcast within the one hour episode. Therefore, all testimony about watching episodes of ANTM on Style Network is inadmissible hearsay, FRE 801(c) and totally irrelevant, FRE 403.

#### Paragraph 37

No objection.

# Paragraphs 38 through 44 and Exhibits

Improper argument without a stated factual basis
Inadmissible hearsay; FRE 801(c)

Paragraph 40 makes reference to an Exhibit 18, but there is no Exhibit 18 attached.

### Paragraph 45

Richardson claims to have evidence "the Defendants provided testimony during their deposition that later turned out to be either misleading or completely and intentionally false. . . . The depositions will be presented at trial."

This is completely improper under FRCP 56 which requires that parties cannot hold back evidence to defeat a motion for summary judgment. *Cartwright v. Cooney*, 2013 U.S. Dist. LEXIS

-7-

30115 at \*7 and \*13 (ND III. 2013).

In truth, Plaintiffs never took any depositions. Besser Decl., ¶ 10. Perhaps Plaintiffs, because of their in pro per status, somehow do not understand the difference between depositions and answers to interrogatories. Either way, Plaintiffs cannot just claim they have "evidence . . . that later turned out to be either misleading . . . or false" and leave it at that.

#### Paragraphs 46 through 47

Exhibit 20 (first mentioned in Paragraph 46) which seems to be offered to show that Richardson and Jeeve would never license one of their works without the other knowing, is insufficient to show even that. It is irrelevant, unauthenticated and contains inadmissible hearsay. FRE 403, 901, 801(c).

The rest of the statements in Paragraph 47 lack foundation, are unauthenticated and constitute inadmissible hearsay. FRE 801(c).

### Paragraph 48

This testimony is contradictory to Mr. Richardson's deposition testimony. He said he did not have a duplicate of the original CD he deposited with the Copyright Offices, but had created one when asked for the original in discovery. Deposition of Delray Richardson, pp. 20-21.

24

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

25

26

28

27

-8-

```
1
   Paragraph 49
 2
         To whatever fact this is intended to pertain, stating that "
 3
   Mr. Ducornet lied in his Declaration . . . In Mr. Ducornet's
 4
    email he wrote . . ." is unauthenticated inadmissible hearsay.
 5
    Respectfully submitted,
    Dated: September 16, 2013
6
    LAW OFFICES OF ROBERT S. BESSER
 7
8
         _/s/ Robert S. Besser
    By:
        ROBERT S. BESSER
9
    Attorneys for Defendant
    CBS STUDIOS INC.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
                                    -9-
27
```

## 1 CERTIFICATE OF SERVICE 2 STATE OF CALIFORNIA: 3 COUNTY OF LOS ANGELES: 4 I am a member of the Bar of the State of California. over the age of 18 and not a party to the within action. 5 business address is 1221 Second Street, Suite 300, Santa Monica, California 90401. 6 On this date, I served the foregoing document described as 7 OBJECTIONS AND MOTION TO STRIKE PORTIONS OF DECLARATION OF DELRAY RICHARDSON on all interested parties in this action by: 8 [XX] BY MAIL: placing a true and correct copy thereof enclosed 9 in a sealed envelope with postage fully pre-paid and addressed as follows: 10 Delray Richardson, In Pro Per 11 Sterling A. Snyder, In Pro Per 2191 East 21<sup>st</sup> Street Box K 12 Signal Hill, CA 90755 13 I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter 14 date is more than one day after the date of deposit stated in this affidavit. 15 I declare under penalty of perjury under the laws of the 16 United States that the foregoing is true and correct. Executed on September 16, 2013, at San Rafael, California. 17 /s/ Christopher Chapin 18 CHRISTOPHER CHAPIN 19 20 21 22 23 24 25 26 -10-27 OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF

THE DECLARATION OF DELRAY RICHARDSON